

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ANNIE LAURIE GAYLOR; DAN
BARKER; IAN GAYLOR, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
ANNE NICOL GAYLOR; and FREEDOM
FROM RELIGION FOUNDATION, INC.,

Plaintiffs,

v.

JACOB LEW, Secretary of the United States
Department of Treasury; JOHN KOSKINEN,
Commissioner of the Internal Revenue
Service; and the UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:16-cv-00215-slc

**UNITED STATES' MOTION TO DISMISS PLAINTIFFS' CLAIM THAT 26 U.S.C. §
107(1) VIOLATES THE UNITED STATES CONSTITUTION**

Plaintiffs fail to establish that this Court has subject matter jurisdiction to hear their claim that 26 U.S.C. § 107(1) violates the United States Constitution. Thus, the defendants move this Court to dismiss that portion of plaintiffs' Complaint, pursuant to Fed. R. Civ. P. 12(b)(1). The United States seeks the following specific relief:

- (1) An order dismissing plaintiffs' claim that 26 U.S.C. § 107(1) violates the United States Constitution, pursuant to Fed. R. Civ. P. 12(b)(1); and
- (2) An order requiring plaintiffs to file an Amended Complaint that conforms to the Court's ruling on this motion.

In support of this motion, the United States submits the facts, arguments, and legal citations contained in the brief filed herewith.

Dated: August 12, 2016

Respectfully submitted,

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Principal Deputy Assistant Attorney General

/s/ Richard G. Rose
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Attorneys for the United States of America

CERTIFICATE OF SERVICE

I certify that, on August 12, 2016, service of the foregoing MOTION TO DISMISS PLAINTIFFS' CLAIM THAT 26 U.S.C. § 107(1) VIOLATES THE UNITED STATES CONSTITUTION was made upon plaintiffs by filing it with the Clerk of Court using the CM/ECF system.

/s/ Richard G. Rose
RICHARD G. ROSE